

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

STERICYCLE, INC.,)		
)		
Respondent,)		
)		
And)	Case Nos.	04-CA-137660
)		04-CA-145466
)		04-CA-158277
TEAMSTERS LOCAL 628)		04-CA-160621
)		
Charging Party)		

**RESPONDENT’S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S
SUPPLEMENTAL DECISION ON REMAND**

NOW COMES Stericycle, Inc., Respondent herein, and files its Exceptions to Administrative Law Judge’s Supplemental Decision on Remand,¹ as follows:

Respondent takes exception to the Administrative Law Judge’s:

1. Finding and/or conclusion that the Board’s decision in *Motor City Pawn Brokers*, 369 NLRB No. 132 (2020) is distinguishable “because the sanctioned policies in that case encompassed only employee communications with customers and third parties, and the business justification cited emphasized the impact on third parties,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 4: 37-39).

¹ Respondent previously filed timely exceptions to the ALJ’s initial Decision. These exceptions address only the Judge’s supplemental findings and conclusions. Additional discussion and citations to the record are contained in Respondent’s Brief in Support of Exceptions. References to the Judge’s Decision are identified as “JD” followed by the appropriate page and line numbers.

2. Finding and/or conclusion that Respondent's policies "have a much broader reach" and "could reasonably be read to include communications with not only third parties and customers, but also with and among employees," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 4: 41-46).

3. Finding and/or conclusion that the Board's decision in *Union Tank Car Co.*, 369 NLRB No. 120 (2020) is more on point and controlling, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 1-5).

4. Finding and/or conclusion that Respondent's policies "are broad and do not specify whether they apply to statements between employees or customers and third parties" and "could be reasonably interpreted to prohibit communications among employees regarding the terms and conditions of their employment, thus interfering with core Section 7 activity," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 5-9).

5. Finding and/or conclusion that these "policies also embrace conduct, rather than just communications, that is harmful to the Company's reputation" and "could reasonably be interpreted to include other protected activities such as participating in a strike or some other form of protest of working conditions," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 9-12).

6. Finding and/or conclusion that "[i]n contrast with the business considerations that attach to policies prohibiting disparaging statements to customers and third parties, none have been shown to exist with respect to policies infringing on protected communication among employees,"

on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 14-16).

7. Finding and/or conclusion that “the Company’s policies stress that the failure to comply could result in termination” and that “[s]uch adverse consequences impose a chilling effect on employees’ Section 7 rights, with no substantial business justifications,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 16-19).

8. Finding and/or conclusion that “[a]s the Board held in *Union Tank Car Co.*, there is no business justification that would outweigh an infringement of this nature on such core Section 7 rights,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 18-21).

9. Failure to read Respondent’s “Conflict of Interest Policy in context, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 22-27).

10. Finding and/or conclusion that Respondent’s policy was materially different from the policy found lawful in *Newmark Grubb*, and as the “Conflict of Interest policy here is much broader and does not make any of these specifications, so *Newmark* cannot be dispositive,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 32-36).

11. Finding and/or conclusion that “As reasonably interpreted, the Respondent’s Personal Conduct and Conflict of Interest Policies violate Section 8(a)(1) of the Act,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 5: 38-39).

12. Finding and/or conclusion that requiring confidentiality “to the fullest extent practicable” is “simply too vague,” as “[e]mployees may reasonably construe the policy to prohibit them from discussing the events that prompted a complaint and the actions taken by the company in response” and the policy “also can be reasonably construed to preclude communications with union representatives, for which there is no legitimate business justification,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 6: 19-25).

13. Finding and/or conclusion that EEOC guidance is unhelpful because this “advisory stresses the importance of an employer’s duty to maintain the confidentiality of victims and witnesses of harassment to ensure that employees are comfortable speaking up,” but “does not even remotely suggest, however, that employees who file such complaints should also be bound to bury their concerns in perpetuity,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 6: 33-38).

14. Finding and/or conclusion that “The flip side, of course, is that an employee who chooses to confer with other employees about their complaints after an investigation has concluded assumes the risk of retaliation” and “[t]he duty, according to the EEOC, extends to the employer, not the employee,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 6: 38-41).

15. Finding and/or conclusion that “[a]s reasonably interpreted, the Company’s policy classifying harassment complaints as confidential is excessively and unjustifiably broad with the potential to infringe upon protected communications between employees after an investigation concludes” and “that policy also violates Section 8(a)(1) of the Act,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of

law. (JD 6: 43-46).

16. Conclusion of Law number 12, on the grounds that this conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 8:17-24).

17. Conclusion of Law number 13, on the grounds that this conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 8: 16-31).

18. Conclusion of Law number 14, on the grounds that this conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 8: 33-37).

19. Conclusion of Law number 15, on the grounds that this conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 8: 39-40).

20. Remedy, including the nation-wide posting requirement, on the grounds that this remedy is not supported by the record evidence and is erroneous as a matter of law. (JD 8: 43-50; 9: 1-10).²

21. Order, paragraphs 1 (g), 1(g), 1(h), and 2(a), on the grounds that the Order is not supported by the record evidence and is erroneous as a matter of law. (JD 9: 5-18, 25-26).

22. Notice to Employees insofar as it does not comport with actual violations of the Act.³

WHEREFORE, for the reasons discussed herein, Respondent requests that all remaining complaint allegations be dismissed.

² Respondent's arguments regarding the Judge's Remedy are contained in Respondent's initial Brief in Support of Exceptions.

³ The ALJ's Supplemental Decision did not include an attached Notice to Employees. Insofar as the Judge was recommending that the Notice attached to his original decision be required, that Notice must, at a minimum, be revised to eliminate provisions that relate to complaint allegations withdrawn by the General Counsel. Respondent, of course, contends that it has not violated the Act in any fashion and that no Notice is appropriate.

Respectfully submitted this 2nd day of November 2020.

/s/ Charles P. Roberts III

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the forgoing EXCEPTIONS by electronic mail
on the following parties:

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This the 2nd day of November 2020.

s/ Charles P. Roberts III